THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.27338 OF 2005

DATED 23RD DECEMBER, 2005

BETWEEN

Kongara Chittemma, D/o Lakshmaiah and others.

… Petitioners

and

The Joint Collector, Krishna District, Machilipatnam,

And others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.27338 OF 2005

ORDER:

The first petitioner is the mother of petitioners 2 and 3. They assail the proceedings of the first respondent dated 22.08.2005 passed in exercise of powers under Section 9 of A.P.Rights in Land and Pattadar Pass Books Act, 1971 (the Act, for brevity), read with Rule 23 of A.P. Rights in Land and Pattadar Pass Books Rules, 1989 (the Rules, for brevity), whereby and whereunder the orders passed by the second respondent, dated 28.01.2003, cancelling the pattadar pass books and title deeds in favour of the petitioners was confirmed.

The first petitioner claims to be the legally wedded wife of one Govindaiah and through him she begot petitioners 2 and 3 herein. Govindaiah was the owner of land admeasuring Acs.1.50 in Survey No.153/1B (hereafter called 'the subject land', for brevity) of Dabbakupalli village, Vatsavai Mandal of Krishna District. He died on 18.04.1997. On an application made by the petitioners, the Mandal Revenue Officer, Vatsavai, the third respondent herein, granted pattadar pass book and title deed to them.

One Nagaratnamma, claiming to be the first wife of late Govindaiah, claimed that Govindaiah executed registered gift deed, dated 17.11.1969, in favour of her. She along with her daughter Vijayalakshmi alienated the property in favour of respondents 4 and 5. These respondents filed O.S.No.188 of 1998 on the file of the Court of the Junior Civil Judge, Jaggaiahpet, for perpetual injunction. The petitioners opposed the suit alleging that Govindaiah revoked the gift deed by registered revocation deed, dated 04.08.1988, and therefore Nagaratnamma and Vijayalakshmi had no marketable title. The trial Court dismissed the suit. While the same was pending, respondents 4 and 5 filed an appeal before the second respondent questioning the issue of pattadar pass book to the petitioners. The same was allowed on 28.01.2003 holding that the revocation deed executed by Govindaiah is invalid and therefore the pattadar pass book issued to the petitioner is liable for cancellation. Aggrieved by the judgment of the trial Court, respondents 4 and 5 filed an appeal being A.S.No.12 of 2003 on the file of the Court of the Senior Civil Judge, Nandigama, and the same was dismissed on 17.01.2005. The first petitioner herein filed a revision before the first respondent under Section 9 of the Act and the same was rejected confirming the orders of the second respondent.

The learned counsel for the petitioners submits that the order of the first respondent is vitiated by non-consideration of relevant material. According to the learned counsel, the first respondent committed error in ignoring the observations made by the trial Court as well as the appellate Court upholding the validity of revocation deed dated 04.08.1988 revoking the gift deed dated 17.11.1969 in favour of Nagaratnamma.

The submission of the learned counsel for the petitioners is without any force. A reading of the order passed by the second respondent and the first respondent would show that all aspects of the matter were considered. The second respondent came to the conclusion that Chittemma being the second wife of Govindaiah, the

marriage is nullity under Section 5(1) of Hindu Marriage Act, 1955 and that the gift deed executed by Govindaiah in favour of his first wife, Nagaratnamma, on 17.11.1969 being irrevocable under Section 126 of Transfer of Property Act, 1889 and having become final, Govindaiah could not have revoked the same without the consent of Nagaratnamma. Further, the gift deed was marked before the trial Court in O.S.No.188 of 1998 as Ex.A.2 and revocation deed as Ex.B.1. The learned appellate Judge in A.S.No.12 of 2003 recorded a finding that Ex.A.2, though described as settlement deed was in fact Will and that the same was not acted upon. However, the appellate court came to the conclusion that being the daughters of late Govindaiah only petitioners 2 and 3 are entitled to have a share in the property and the first petitioner has no such right. Curiously, aggrieved by the orders of the second respondent, only the first petitioner alone filed the revision before the first respondent. For that reason also the revision was dismissed. As per the provisions of Rule 9 of the Rules, the authorities are precluded from enquiring into rival claims under the Act only when there is a civil suit for better title. In this case, the suit filed by respondents 4 and 5 was admittedly for injunction and therefore, the same would not in any manner influence the decision making by the authorities under the Act. In such a situation, for the petitioners claim for better title or a share in the property, they have to approach the civil Court as contemplated under Section 8(2) of the Act and stake their claim. Insofar as the impugned order is concerned, the same does not suffer from any infirmity warranting interference in this writ petition.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

23.12.2005.

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